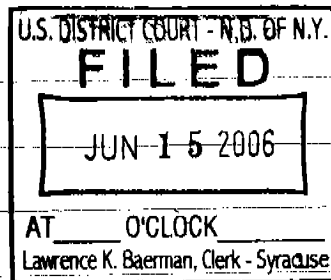


UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

MATTHEW JOHN MATAGRANO,

Plaintiff



- VS -

NOTICE OF MOTION  
FOR LEAVE TO AMEND  
THE PLEADING

OFFICE OF MENTAL HEALTH, NEW YORK STATE

DEPARTMENT OF CORRECTIONAL SERVICES; DR.

REGINA MELES, MD; ROBERT CARR; ANN

ANDZEL; CHRISTINE; ANTHONY DEVETO;

JOHN DINARDO; PATRICK; CINDY LAW;

ROBERT A. WIRKPATRICK; DR. CHRISTOPHER

M. DEKEN, MD; DAVID PREVETT; and

ROBERT RAYMOND,

Defendants. X

Pursuant to Rule 15(d) F.R.C.P.

CEV NO: 05-CV-1459 (DNH) (RFT)

PRO-SE

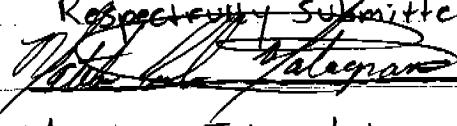
SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit in support for a motion for leave to amend the pleading pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, the proposed amended pleading and all other proceedings had herein, the plaintiff, appearing pro-se being duly sworn to the 12 day of JUNE, 2006, will move this Court on the 26<sup>th</sup> day of JULY, 2006, or as soon thereafter as movant can be heard, before the Hon. RANDOLPH F. TRECCE, U.S. Magistrate Judge at the U.S. Courthouse located at 100 S. Clinton Street, Syracuse N.Y. 13261-7367, FOR an order granting leave to file the annexed amended complaint pursuant to Rule 15(d) of the Federal Rules of Civil Procedure; and FOR an ORDER pursuant to Rule 12(a)(1) directing counsel for

NOTICE OF MOTION  
05-CV-1459 (DNH) (RFT)  
- 2 -

defendants to file an answer to the amended pleading or otherwise move.

Dated: June 12, 2006  
Alden, N.Y.

Respectfully Submitted,  
  
Matthew John Matagreno

04A5883 Plaintiff Pro-Se

Wende Correctional Facility

3040 Wende Rd. P.O. Box 1187

Alden, N.Y. 14004-1187

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MATTHEW JOHN MATABRANO,

Plaintiff,

- VS -

AFFIDAVIT IN SUPPORT  
OF MOTION FOR LEAVE  
TO AMEND THE PLEADING

OFFICE OF MENTAL HEALTH; NEW YORK STATE

Rule 15 (d) F.R.C.P.

DEPARTMENT OF CORRECTIONAL SERVICES; DR.

CEV.NO: 05-CV-1459 (DNH) (RAT)

REGINA MELES; MD; ROBERT CARR; ANN

PRO-SE

ANDZEL; CHRISTENE; ANTHONY DEVITO;

JOHN DENARDO; PATRICK; CINDY LAW;

ROBERT A. KIRKPATRICK; DR. CHRISTOPHER

M. DEHN, MD; DAVID PREVETT; and

ROBERT RAYMOND,

Defendants.

STATE OF NEW YORK )

COUNTY OF ERIE ) ss:

Matthew John Matabrano, being duly sworn to the 12 day  
of June, 2006, deposes and says:

1) I am the pro-se plaintiff in the above-captioned action and am  
familiar with all the proceedings had herein.

2) I make this affidavit in support of plaintiff's motion for leave  
to amend the pleading pursuant to Rule 15(d) of the Federal Rules of  
Civil Procedure; and for an Order pursuant to Rule 12(a)(1)  
of the Federal Rules of Civil Procedure directing counsel for the  
defendants to answer the amended Complaint.

AFFIDAVIT IN SUPPORT  
05-CV-1459 (DMA) (RFT)

- 2 -

3) That the granting of plaintiff's motion will not prejudice or unduly burden the defendants.

4) That Christopher Detin, MD, David Privett, Robert A. Kirkpatrick and Robert Raymond all have personal involvement of the violation of plaintiff's constitutional rights as alleged in the annexed amended complaint. Plaintiff at all times relevant herein has been under sentence to the care, custody, and control of the New York State Department of Correctional Services by virtue of a criminal conviction and since it is charged with the care, custody, and control of the plaintiff it is a reasonable expectation that the Department of Correctional Services would be named as a defendant, because it is a public entity as described pursuant to 42 U.S.C. § 12101, and the gravamen of plaintiff's claims is predicated upon the acts and or omissions of the New York State Office of Mental Health, New York State Department of Correctional Services, their employees, contractors, agents or volunteers; and

5) That the plaintiff seek to file an amended complaint to bring forth the facts of the continuing violation(s) of plaintiff's rights as enumerated in the annexed amended pleading.

6) A previous amendment as of right was filed in this action on or about December 2, 2005. (Civ. Dkt. No. 4)

7) That the allegations asserted are actionable, non-frivolous and in no way intended to harass the defendants named.

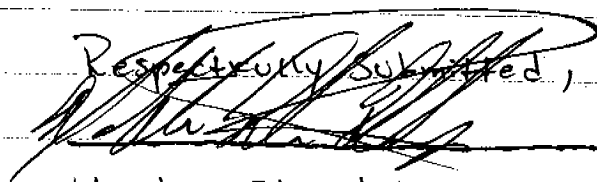
WHEREFORE, plaintiff respectfully requests that leave to amend the pleading be granted; and that an order be issued directing

AFFIDAVIT IN SUPPORT  
05-cv-1459 (DNH) (RPT)  
- 3 -


Counsel for the defendants to answer the amended complaint or  
otherwise move; And

For such other and further relief as this Court deems  
just, proper, and equitable.

Dated: June 12, 2006  
Alden, N.Y.

Respectfully Submitted,  
  
Matthew John Matagrano  
04AS883 Plaintiff Pro-Se  
Wende Correctional Facility  
3040 Wende Rd. Po. Box 1187  
Alden, N.Y. 14004 - 1187  
(716) 937-4000

SWORN TO BEFORE ME  
THIS 12 DAY OF June, 2006

  
NOTARY PUBLIC

MARIAN DUMINUCO  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires Jan. 2007

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK X

MATTHEW JOHN MATABRANO,

Plaintiff,

- vs -

AFFIRMATION OF  
SERVICE BY MAIL

OFFICE OF MENTAL HEALTH, et. al;

Defendants. X

05 - CV - 1459 (DNH)(RFT)

STATE OF NEW YORK )

ss:

COUNTY OF EREE )

Matthew John Matabrano, affirms and says

Under the penalty of perjury that: (28 U.S.C. Section 1746)

1) I am over the age of 18 and reside at Wende  
Correctional Facility, 3040 Wende Rd. P.O. Box 1187, Alden, N.Y. 14004.

2) That on the 12<sup>th</sup> day of June, 2006, I served by  
first class mail the following documents:

(i) Notice of Motion to Amend;

(ii) Affidavit in Support;

(iii) Amended Complaint.

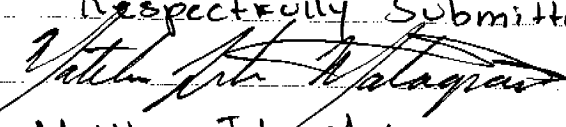
in the above entitled proceeding, by mailing the same in a sealed envelope,  
postage paid and delivering it to prison authorities according to the  
established procedures for mailing such items, addressed to the  
proper mailing address of counsel for the defendants as listed  
below:

Hon. Elliot Spitzer

Attorney General State of New York

Department of Law  
State Capitol  
Albany, N.Y. 12224

Dated: June 12<sup>th</sup>, 2006  
Alden, N.Y.

Respectfully Submitted,  
  
Matthew John Matagrano  
04A5883 Plaintiff Pro-se  
Wende Correctional Facility  
3040 Wende Rd. Po. Box 1187  
Alden, N.Y. 14004-1187  
(716) 937-4000